

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL ALLEN FELLOWS IV,

Defendant and Appellant.

E072252

(Super.Ct.No. FVI18003260)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson,
Judge. Affirmed.

Micah Reyner, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On November 14, 2018, a felony complaint charged defendant and appellant
Samuel Allen Fellows IV with arson of an inhabited structure under Penal Code section

451, subdivision (b) (count 1). On December 3, 2018, defendant pled no contest to an added second count of unlawfully causing a fire under Penal Code section 452, subdivision (c), a felony. Thereafter, the trial court granted the People's motion to dismiss count 1. Moreover, pursuant to the terms of the plea agreement, the trial court sentenced defendant to three years of probation, with the condition that he serve 270 days in county jail with credit for time served, with the balance of jail time to be served on the weekends through a work-release program.

On December 14, 2018, a probation officer filed a petition to revoke defendant's probation. The petition alleged that defendant failed to comply with two probation conditions: (1) to personally report to probation; and (2) to keep probation apprised of defendant's place of residence. On January 23, 2019, at the hearing on the petition, defendant did not contest that he violated his probation. The trial court sentenced defendant to two years in prison. The court then stayed the prison sentence and ordered defendant's probation reinstated.

On February 1, 2019, a probation officer filed a second petition to revoke probation. The second petition alleged again that defendant failed to report to probation and to keep probation apprised of his residence. On February 27, 2019, following a contested hearing, the trial court revoked defendant's probation and imposed the two-year sentence.

On February 28, 2019, defendant filed a timely notice of appeal. Defendant marked the box that stated: "This appeal is after a contested violation of probation."

B. FACTUAL HISTORY

Regarding the underlying offense, on November 9, 2018, defendant and a cohort were arrested near an abandoned building in Victorville. According to the police report, heavy smoke was coming out of the building when the police arrived.

At the first probation revocation hearing on January 23, 2019, the trial court ordered defendant to report to the probation department no later than the close of business on “Monday the 28th.” The court then told defendant, “Listen to what your probation officer tells you. If you do not, if you miss a term, if you don’t go to a program, if you violate a new law, that will put you in violation again. And all that will be left to do is us having a hearing, and the two years will come into play. Does that make sense?” Defendant responded that he understood. Defendant then asked, “Say I get pulled over for driving a car and get a ticket and she says, Well, that’s a violation you got a speeding ticket?” In response, the court replied, “I don’t care about infractions. I care about misdemeanors, and I care about felonies. That’s the only way your probation can get revoked.”

At the second probation revocation hearing, defendant testified that he was aware that he had to report to probation by January 28, 2019. The probation officer testified that defendant failed to report to probation by January 28th.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of

the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. Pursuant to *Anders*, counsel identified the following issues to assist the court in its search of the record for error:

1. May defendant make a timely challenge on appeal to probation conditions imposed before the contested revocation hearing? (*People v. Glaser* (1965) 238

Cal.App.2d 829, 824.)

2. Assuming defendant may challenge probation conditions imposed prior to his contested revocation hearing, did the trial court create an unconstitutionally vague probation condition when it orally instructed defendant to report to probation on “Monday the 28th,” without verbally specifying the month or year? (*In re Sheena K.* (2007) 40 Cal.4th 875, 890-892.)

3. Did the trial court abuse its discretion by acting arbitrarily or capriciously when it told defendant that it would only revoke his probation if he committed a misdemeanor or felony, and then later revoked defendant’s probation for non-criminal conduct? (*People v. Zaring* (1992) 8 Cal.App.4th 362, 378-379?

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error, considered the issues listed by appellate counsel, and find no arguable issue for reversal on appeal.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.